IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE CIVIL JURISDICTION

Writ Petition No l830 of 2005

Rajendra Kashinath Nikumbh ...Petitioner
vs
Sadashiv V Falgune and ors.....Respondents

Mr. V.Z.Kankaria for petitioner
Mr R V More for Respondent l to 3

CORAM: A.P.SHAH J.

Dated 29.9.2005

P.C:
Heard Advocates.

. The petitioner is original defendant no. 5. The respondent nos l to 3 are original plaintiffs. The plaintiffs have filed the suit in question for declaration and injunction. The suit sommons was served on the petitioner on l2.l2.2003. The petitioner appeared pursuant to the summons and applied on 28.l.2004 for grant of adjournment to file written statement.The matter was adjourned to l0.2.2004 for filing written statement. On l0.2.2004 written statement was not filed by the petitioner and the matter was adjourned for no written statement order. On l5.2.2004 an application was moved by the petitioner for taking the written statement on record . The trial court has rejected the said application vide order dated

l6.7.2004 on the ground that the written statement ought to have been filed within 90 days from the date of service of summons.

. I have heard Mr. Kankaria for the petitioner and Mr More for respondent nos.l to 3. There is a delay of only 3 days in filing the written statement. In a recent judgment in Rani Kusum vs. Kanchan Devi and ors, (2005) 6 SCC 705 the Supreme Court has held that the provisions of Order 8 rule l are directory and they do not take away the power of the court to take written statement on record though filed beyond 90 days. Considering the facts and circumstances of the present case the delay of 3 days in filing the written statement deserves to be condoned. Accordingly the impugned order dated l6.7.2004 is set aside. The trial court is directed to take the written statement of the respondents on record and proceed with the trial of the suit. Rule is made absolute accordingly with no order as to costs.